

EXHIBIT 12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ASARCO, LLC,)
) Case No.:
Plaintiff,) 4:11-cv-00864-JAR
)
v.)
)
NL INDUSTRIES, INC., et al.,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF DONALD A. ROBBINS

Phoenix, Arizona
April 18, 2014
9:05 a.m.

REPORTED BY:
Janice Gonzales, RPR, CRR
AZ Certified Court
Reporter No. 50844

1 other words, it goes through a flotation process, the
2 metals of value are separated from things like iron
3 and silica and lime, and all of those materials
4 basically go to the tailings while the metals of
5 interest go into what's called the concentrate which
6 goes on to the smelter for processing.

7 Q. Well, are tailings still a rock, a hard
8 substance?

9 A. They're more like sand.

10 Q. Okay. That's what I was trying to get to
11 is the -- the size and -- and composition of
12 tailings. So you would say it's a coarse sand-like
13 material?

14 A. Yes, sir.

15 Q. Okay. And to your knowledge, were
16 tailings ever used, in any way, for industrial or
17 other purposes?

18 A. From West Port -- West Fork, not that I'm
19 aware of.

20 Q. Okay. And are you aware of -- of whether
21 there were any railroads in the area of the West Fork
22 Mine and Mill?

23 A. To the best of my knowledge, both from
24 Sweetwater and West Fork, all of the ore was
25 transported to the smelters by truck.

1 Q. Okay. So you're not aware of any
2 railroads in the area of West Fork or Sweetwater
3 which may have been used in transportation of
4 material?

5 A. Not that I'm aware of.

6 Q. Okay. And was it ever part of your
7 duties and responsibilities with regard to West Fork
8 and Sweetwater to specifically look for railroads in
9 the vicinity?

10 A. No.

11 Q. Were you ever asked in any capacity
12 whether you were still employed by ASARCO or after
13 retirement in your consulting capacity to investigate
14 the location of Union Pacific right-of-ways and
15 railroads in the area of West Fork and Sweetwater?

16 A. No.

17 Q. All right. Now, let me direct your
18 attention to the Sweetwater Mine for a moment. Was
19 that also a mill?

20 A. Yes, sir.

21 Q. Okay. Was it the same type of operation
22 that West Fork had?

23 A. Yes.

24 Q. I'm going to go back to West Fork for
25 just a minute because I want to put some time frame

1 from time to time did occur.

2 Q. Well, would it be fair to say that for
3 both West Fork and Sweetwater, the potential for
4 wind-blown erosion of the tailings pile was something
5 that was appreciated?

6 MR. BELANCIO: I'm going to object and
7 instruct the witness not to answer. We're going to
8 ASARCO's liability here which is beyond the limiting
9 order. If you want to get to questions that -- about
10 UP's potential liability as to the tailings piles,
11 please do so, but I'm going to instruct him not to
12 answer that question.

13 Okay. And I'm sorry, as a little point
14 of order, Carolyn, could you type a little lighter?
15 I'm sorry, it's just the -- the keys banging is
16 pretty loud and it's start -- starting to distract me
17 a little bit, and I just --

18 MS. MCINTOSH: I'm sorry, I'll attempt to
19 do so, but...

20 MR. BELANCIO: I appreciate it.

21 BY MR. CONNELLY:

22 Q. During the time that you were working for
23 ASARCO and had environmental compliance
24 responsibilities for West Fork and Sweetwater, do you
25 recall ASARCO spending any money to address

1 remediation or contamination on any railroad
2 right-of-ways?

3 A. Now, are we talking about --

4 Q. West Fork and Sweetwater, in that area?

5 A. No, sir.

6 Q. Okay. And we're going to get to this in
7 more detail, but of course we know that ultimately
8 ASARCO settled the claims of EPA and the State of
9 Missouri with regard to West Fork and Sweetwater,
10 correct?

11 A. Yes, sir. Yes, sir.

12 Q. Are you aware of the EPA and the State of
13 Missouri expending any money for response costs
14 connected with any railroad right-of-ways in the area
15 of West Fork and Sweetwater?

16 A. I am not aware of any.

17 Q. Okay. In your consulting capacity,
18 Mr. Robbins, have you been asked to provide any
19 oversight over how the EPA or the State of Missouri
20 is spending ASARCO's settlement money in connection
21 with the response costs in the area of West Fork and
22 Sweetwater?

23 A. No, sir.

24 Q. Do you have any personal knowledge of
25 that?

1 A. No, sir.

2 Q. Okay. All right. Now, let me direct
3 your attention to the Glover Smelter. What do you
4 recall about the history of that smelter in terms of
5 when it began and ended? You've already told us it
6 was sold to Doe Run in '98.

7 A. Right.

8 Q. So how far back does Glover Smelter go?

9 A. It was built in 1968.

10 Q. Okay.

11 A. And it was built to handle ores from the
12 New Lead Belt -- Belt as opposed to the Old Lead
13 Belt.

14 Q. Where is the Old Lead Belt?

15 A. At St. Francois County in the Catherine
16 Mine.

17 Q. Okay. And the New Lead Belt was where?

18 A. Sweetwater, West Fork, and what's known
19 as the Viburnum Trend.

20 Q. Okay. So Glover was built to handle ores
21 from the New Lead Belt?

22 A. That's right.

23 Q. And never did receive ores from the Old
24 Lead Belt?

25 A. No, sir.

1 A. Yes.

2 Q. Okay. Have you ever been asked to
3 undertake any investigation of railroads in general
4 in the area of the Glover Smelter or Union Pacific
5 railroads in particular?

6 A. No.

7 Q. Did you ever make any observations or do
8 you hold any personal knowledge regarding the
9 existence of railroads in the area of the Glover
10 Smelter?

11 A. No.

12 Q. Do you know whether or not the Glover
13 Smelter operated its own railroad, an industrial line
14 within the confines of the facility?

15 A. As I recall, there were tracks within the
16 Glover Smelter that they used for internal moving of
17 concentrate.

18 Q. So am -- am I -- do I understand that you
19 have no personal knowledge as to what Union Pacific
20 tracks may or may not be in the vicinity of the
21 Glover Smelter?

22 A. I don't.

23 Q. And you don't know whether Union Pacific
24 ever serviced that facility in any way?

25 A. No.

1 Q. Okay. Was there ever a time given your
2 environmental responsibilities where you or your
3 department ever reported it to the EPA or the State
4 of Missouri, any release of contaminants from a
5 railroad right-of-way?

6 A. No.

7 Q. Are you aware of ASARCO ever spending any
8 money addressing remediation of contaminants in a
9 railroad right-of-way in the vicinity of the Glover
10 Smelter?

11 A. No.

12 Q. Are you aware of the EPA or State of
13 Missouri ever spending any money response costs
14 addressing contamination on any railroad
15 right-of-ways in the vicinity of the Glover Smelter?

16 A. No.

17 Q. And do you have any knowledge as to how
18 the EPA and the State of Missouri may have used --
19 whether they used any of the funds paid by ASARCO in
20 the settlement in connection with remediating
21 conditions on railroad right-of-ways in the area of
22 the Glover Smelter?

23 A. No.

24 Q. Mr. Robbins, before your retirement, did
25 you ever have any communications with the EPA or

1 State of Missouri concerning environmental conditions
2 at West Fork?

3 A. Not that I recall.

4 Q. Same question for Sweetwater. During --
5 before your retirement, would you have had any
6 communications with either the EPA or State of
7 Missouri concerning environmental conditions at
8 Sweetwater?

9 A. Now, we talked about the proofs of claim
10 that came from the --

11 Q. Yes, sir.

12 A. That would be the extent of my --

13 Q. You're right. Well, by -- I mean, proofs
14 of claim would have been something they filed --

15 A. Okay.

16 Q. -- and you may have become aware of.

17 A. Okay. Okay.

18 Q. What I'm really trying to get to is
19 whether there were any communications you had with
20 those agencies either reporting things or addressing
21 issues they raised where you were directly
22 communicating either in person, by phone, or in
23 writing?

24 A. No.

25 Q. Okay. And same for the Glover Smelter.

1 manager for Glover?

2 A. What period of time?

3 Q. Again, when you had some responsibility.

4 A. Okay.

5 Q. Some environmental compliance
6 responsibility.

7 A. Curtis Bates.

8 Q. All right. And what years do you
9 associate with Mr. Bates at the Glover Smelter?

10 A. '70 -- about '72 to maybe 1990.

11 Q. And what about up to '98, do you know who
12 the manager would have been during that period?

13 A. No.

14 Q. Do you know where Mr. Bates is now?

15 A. No.

16 Q. Now, before 1998, did you have any
17 information about the potential for CERCLA liability
18 to arise associated with materials used on railroad
19 right-of-ways?

20 A. Would you restate that, please?

21 Q. I'll be glad to.

22 Before 1998 --

23 A. Okay.

24 Q. -- did you have any information that
25 materials used on railroad right-of-ways could create

1 CERCLA liability for releases of contaminants?

2 A. Now, are we talking now about Missouri or
3 anywhere?

4 Q. Well, I'm going to do both. So which one
5 would you like to take first?

6 A. Well, anywhere, yes, I did.

7 Q. Okay. So how had that information come
8 to your attention in the first place?

9 A. Well, at -- in the East Helena smelter,
10 we were serviced by the railroad and there was a -- a
11 concern there about both the right-of-way and the
12 yard in Helena --

13 Q. Okay.

14 A. -- because of the ballast and also the
15 spilled concentrate that was viewed to be an issue.

16 Q. Okay. And how did that concern arise in
17 East Helena?

18 A. Their concern on how -- how to clean it
19 up because there was a potential for human exposure
20 and who was going to pay for it.

21 Q. How did that come to your attention,
22 Mr. Robbins?

23 A. Actually, the railroad brought it to my
24 attention.

25 Q. Okay. And when was that brought to your

1 attention?

2 A. I'd say early '90s.

3 Q. Okay. So somewhere in the early '90s,
4 the railroad which was servicing the East Helena
5 smelter brought to your attention that there could be
6 contaminants on the railroad right-of-way that may
7 create human exposure issues?

8 A. Yes.

9 Q. How was that addressed in East Helena?

10 A. We basically said that there were a
11 number of reasons why we didn't think that that was a
12 significant issue. And furthermore, we felt that
13 since we didn't take title to concentrate until it
14 went through the smelter gates at East Helena, we
15 didn't think that any material in the yard was ours.

16 Q. Okay. So what -- did ASARCO spend any
17 money then in connection with the East Helena site to
18 address environmental conditions on the railroad
19 right-of-way?

20 MR. BELANCIO: I'm going to object that
21 this is beyond the scope of the limiting order and
22 instruct the witness not to answer.

23 MR. CONNELLY: Well, it concerns UP
24 liability.

25 MR. BELANCIO: Not in the SEMO sites.

1 MR. CONNELLY: Huh?

2 MR. BELANCIO: In the SEMO sites?

3 MR. CONNELLY: Well, no, we're talking
4 about East Helena.

5 MR. BELANCIO: Right.

6 MR. CONNELLY: And I'm trying to find out
7 what his knowledge is that may relate to actions
8 which were material at the SEMO sites.

9 MR. BELANCIO: I'm still going to stand
10 on the instruction at this point.

11 BY MR. CONNELLY:

12 Q. Okay. Are you going to follow counsel's
13 instruction and not answer that question?

14 A. Yes, sir.

15 Q. All right. Were there any other
16 locations outside of Missouri where you became aware
17 of conditions on railroad right-of-ways which might
18 create environmental liability?

19 A. Coeur d'Alene, Idaho.

20 Q. And approximately when did you become
21 aware of that?

22 A. Somewhere around 1990.

23 Q. Okay. Any others?

24 A. Not that I recall.

25 Q. All right. Now, let me direct your

1 Q. Okay. Now, if I understand your
2 testimony correctly, at the time of the SEMO
3 settlement, you personally and ASARCO as a company,
4 had some historical knowledge that there can be mine
5 tailings and chat used as ballast on railroads?

6 MR. BELANCIO: Objection; misstates the
7 witness' prior testimony. You can go ahead and
8 answer.

9 THE WITNESS: I think -- I think we had
10 knowledge that mining material had been used as
11 ballast.

12 BY MR. CONNELLY:

13 Q. Yes, sir.

14 A. Yeah.

15 Q. And that's because of what you had found
16 out at the East Helena site and at Coeur d'Alene?

17 A. Right.

18 Q. So on both those sites, there was some
19 knowledge that mining material had been used as
20 ballast on railways?

21 A. Right.

22 Q. So that was known before the SEMO
23 settlement, wasn't it?

24 A. Yes.

25 Q. Okay. And I think you've indicated that

1 I, Donald A. Robbins, do hereby declare
2 under penalty of perjury that I have read the
3 foregoing transcript; that I have made any
4 corrections as appear noted, in ink, initialed by me,
5 or attached hereto; that my testimony as contained
6 herein, as corrected, is true and correct.

7
8 _____ I have made changes to my deposition.

9 _____ I have NOT made any changes to my deposition.

10
11 EXECUTED this _____ day of
12 _____, 20__, at _____,
13 _____ (City)
14 (State)

15
16
17
18 _____
19 Donald A. Robbins
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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)

3 CERTIFICATE

4 I, JANICE E. GONZALES, Certified Court
5 Reporter for the State of Arizona, certify:

6 That the foregoing proceeding was taken
7 by me; that I am authorized to administer an oath;
8 that the witness, before testifying, was duly sworn
9 by me to testify to the whole truth; that the
10 questions propounded by counsel and the answers of
11 the witness were taken down by me in shorthand and
12 thereafter reduced to print by computer-aided
13 transcription under my direction; that review and
14 signature was requested; that the foregoing pages are
15 a full, true, and accurate transcript of all
16 proceedings, all to the best of my skill and ability.

17 That the amount of time used by each
18 party at the deposition is as follows:

19 Michael Connelly, Esq. - 2 hours, 8 minutes

20 Michael Belancio, Esq. - 1 minute

21 Joel Herz, Esq. - 0 minutes

22 Carolyn McIntosh, Esq. - 0 minutes

23 Norton Colvin, Esq. - 0 minutes

24 Maxine Martin, Esq. - 0 minutes

1 I FURTHER CERTIFY that I am in no way
2 related to nor employed by any of the parties hereto
3 nor am I in any way interested in the outcome hereof.

4 DATED this 29th day of April, 2014.

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7
8 Janice E. Gonzales, RPR, CRR
9 Certified Court Reporter No. 50844
10 For the State of Arizona
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